THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte DONALD H. LUCAST
and
STEVEN B. HEINECKE

_____

Appeal No. 95-0733
Application 07/887,534[1]

_____

ON BRIEF

_____

[1] Application for patent filed May 21, 1992. According to appellants, the application is a continuation of Application 07/458,910, filed December 29, 1989, abandoned.

Before JOHN D. SMITH, GARRIS and PAK, *Administrative Patent Judges*.

JOHN D. SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal pursuant to 35 U.S.C. § 134 from the final rejection of claims 1, 4-6, 11-13, 16 and 23. Claims 2, 3, 7-10, 14, 15 and 17-22 remain in the application as directed to a nonelected invention.

The subject matter on appeal is directed to an adhesive composite having very high moisture vapor transmission properties with little sacrifice of other desirable properties when used as a wound dressing. To describe the invention in greater detail and illustrate the claims on appeal, claim 1 is reproduced as follows:

1. An adhesive composite comprising

a) a polymeric backing layer,

b) a high moisture vapor transmission layer, and

c) a skin contacting adhesive layer;

wherein said high moisture vapor transmission layer is selected from a polymeric film backing material that has a

moisture vapor transmission rate of at least 2000 g/m^2/24 hrs 37EC/100-20% RH when one mil thick as tested using the Upright Cup method, an adhesive material having a Standardized Transmission Rate of at least 900 g/m^2/24 hrs/37EC/100-20% RH, and a combination thereof; provided that when said high moisture vapor transmission layer is selected from a polymeric film backing material, said polymeric backing layer is selected from a polymeric film backing material having a tensile strength when wet that is no more than 30% less than the tensile strength of the backing material when dry when one mil thick, and when said high moisture vapor transmission layer is selected from an adhesive material, said skin contacting

adhesive layer is selected from an adhesive material having an adhesion to skin strength of at least 15 g/in.; with the further proviso that none of the materials of the layers a), b) or c) is the same as the material of another layer and that the overall adhesive composite exhibits a moisture vapor transmission rate of at least about 1200 g/m^2/24 hrs/37EC/100-20% RH.

The references of record relied upon by the examiner are:

Pawelchak et al. (Pawelchak)	4,538,603	Sept. 3, 1985
Heinecke	4,598,004	July 1, 1986

The appealed claims stand rejected[2] for obviousness (35 U.S.C. § 103) over Pawelchak in view of Heinecke.

[2] The claims stand or fall together. See the Brief at page 3.

For essentially the reasons well stated in the Answer, we affirm the rejection.

Pawelchak, according to the examiner, discloses an occlusive dressing adhesive composite which corresponds identically to the claimed adhesive composite with the exception that Pawelchak's specifically described outer film 11 (Figures 1, 2 and 7), described as an impermeable film "which serves to protect the exposed surface" of Pawelchak's dressing "from contamination by water or soil" (column 2, lines 25-28), may not inherently

exhibit a "tensile strength when wet that is no more than 30% less than the tensile strength of the backing material when dry when one mil thick" as required by the appealed claims, and may not have a moisture transmission rate adequate to provide Pawelchak's overall composite with a moisture vapor transmis- sion rate as high as the claimed composite. In support of the examiner's position, the examiner found that Pawelchak's foam layer 12 and adhesive layers 13 and 14 are

materials which "inherently exhibit the broadly claimed functional parameter requirements" (i.e., the vapor transmission properties) of the claimed high moisture vapor transmission layer b) and the skin contacting adhesive layer c). Since appellants have raised no challenge to these findings, we accept them as factual. Compare *In re Eskild*, 387 F.2d 987, 988, 156 USPQ 208, 209-10 (CCPA 1968).

With respect to the claimed polymeric backing layer a), the examiner correctly determined that Heinecke discloses polymeric film backings, such as polyurethane and Hytrel™ elastomeric polyester, the same materials preferred by appellants for their polymeric film backings. It is significant to note that such films are described as moisture vapor permeable and liquid and bacteria *impermeable*. See Heinecke at column 6, lines 1-10, and the specification at page 6, lines 1 and 2, and page 9, lines 4-8.

Accordingly, the examiner contends, and we agree, that one of ordinary skill in the art, motivated by an expected enhancement in vapor permeability, would have substituted Heinecke's high moisture vapor permeable/liquid

impermeable films for the water impermeable backing layer 11 of Pawelchak.

Appellants contend that the combination of references is improper because Pawelchak is directed to an occlusive dressing which collects fluids rather than omitting them through moisture-vapor transmission. Appellants, however, have presented no objective evidence concerning the overall vapor transmission properties of Pawelchak's dressing, nor any evidence that high *vapor* transmission properties are not desired for an occlusive bandage as described by Pawelchak. Further, although appellants characterize the claimed dressing as one which is "dry because it does not collect fluids," we observe that appellants use a high moisture transmission layer which absorbs up to 100% of its own weight in water. See the specification at page 11, lines 21-32. In short, we cannot subscribe to appellants' argument that the claimed invention (or the adhesive composite of the Heinecke reference) functions in an "opposite manner" from that of the Pawelchak adhesive composite.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in con- nection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

JOHN D. SMITH Administrative Patent Judge	)	
BRADLEY R. GARRIS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
CHUNG K. PAK Administrative Patent Judge	)	

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